

WEBINAR WEDNESDAYS



Wednesday, June 24, 2020

HE SAID, SHE SAID, WE LOOKED: HOW TO FIND CORROBORATING EVIDENCE



Presented by:

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Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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Office of Juvenile Justice and
Delinquency Prevention



**He Said, She Said, We
Looked** and Corroborating Evidence

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Disclaimer

- The following is not intended to constitute legal advice.
- Always consult your local prosecutor or attorney for guidance.
- Credit to Victor Vieth and Zero Abuse Project team members for significant content and research contributions.





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Taking It Home	
<u>Ideas</u>	<u>Applications</u>

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Agenda
<ul style="list-style-type: none">• Structural Issues• Forensic Interview as Roadmap• Suspect Statements• Prior Bad Acts• Physical Evidence• Social Media• Digital Evidence

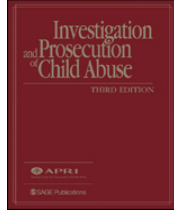
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Structural Issues

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Best Practices

- Immediate response
- Specialized units
- Use CACs
- Highly trained forensic interviewers
- Involve prosecutor early



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MDT investigation protocol



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An immediate response



- Always have investigators, social workers and prosecutors with specialized training on call



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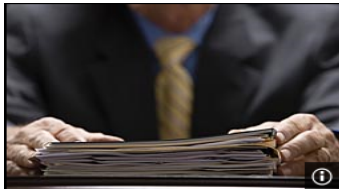
Limited investigators involved



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Limited prosecutors involved



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Prosecutor involved from the outset



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“Vertical prosecution is recommended in all sexual assault cases. Vertical prosecution of sexual assault cases means the same prosecutor, who has specialized training in sensitive crime issues, is assigned to the case from beginning to end. With vertical prosecution, victims are able to work with the **same prosecutor and investigator** from the time potential charges are first reviewed through the sentencing of the offender...”

–National Sexual Violence Resource Center



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Vertical prosecution:

- improves conviction rates
- reduces victim trauma
- provides more consistent, appropriate sentencing.

“It is therefore considered best practice.”

–National Sexual Violence Resource Center



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Polyvictimization research

- Exposure to multiple forms of victimization was common.
- Almost 66% of the sample was exposed to more than one type of victimization
 - 30% experienced five or more types
 - 10% experienced 11 or more different forms of victimization in their lifetimes.
- Poly-victimization is more highly related to trauma symptoms than experiencing repeated victimizations of a single type

(Turner, Finkelhor, et al, 2010)



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Forensic Interview as Roadmap



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Forensic interview training



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Corroboration and photos



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Closely examine the victim's statement

- When you assume
- Think like a child
 - Worm, microphone
- Motive evidence
 - Gifts from child
- Sexual Oddities
 - Whinny
 - "Your honor..."
- "Fantastic Statements"
 - Butterfly, devil



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There is always a crime scene

- Photograph the crime scene
 - Can help the child testify ("In the kitchen", "on the patio")
 - Corroborates account, increasing credibility
 - Exposes biased third parties
 - "I saw him walk her home..."
- Document scene from perspective of victim
- Bring crime scene to life



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Crime Scene Photos and Corroboration

- "Daddy came into my bedroom, removed a Winnie the Pooh book from the closet book case and then sat on the edge of my bed. As he read the book, he placed his hands between my legs and moved his hand around. He then put the book on my nightstand, pulled me on the carpeted floor and next to the bed licked my koochie." (child indicates on anatomical diagram koochie is vagina)
- How might photos help corroborate the child's testimony?



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Photos can corroborate ten aspects

- The entry way (daddy came into my room)
- The child has a bedroom
- There is a closet
- There is a book case in the closet
- There is a Winnie the Pooh book missing from closet book case
- There is a bed for perp to sit on the edge of
- There is a nightstand
- There is a Winnie the Pooh book on nightstand
- There is a carpeted floor
- There is room "next to the bed" to conduct crime



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Crime scene investigation

- Marks on child's neck
- Measure length of chain & child's arm span
- Can child access food? Water? Bathroom? Entertainment (TV, computer, books)? Chair? Bed?
- Can child see park from window?
- Child's clothes (wetness/soiling)
- Temperature in the house
- Can dog access food, water, bed, toys, toilet area (paper, outdoors)?



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Mental health aspects to corroboration

- Additional insight into victim behavior and perspectives over course of therapy
- Potential expert witness and/or support person who can contextualize victim behavior for the jury
- Progressive disclosures
- Additional details



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Suspect Statements



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Suspect interrogation



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"Family Man"

8 Glen: No sir. I love my wife. I'd never cheat on her.

9 Bennington: Oh. Um...

10 Glen: As far as this situation that happened, that's still probably considered cheating but I

11 didn't, I...

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Corroboration often leads to confession

Suspect Confession of Child Sexual Abuse to Investigators

Tommy Lippert,^{1,2} Theodore P. Cross,³ Lisa Jones,⁴ and Wendy Walsh⁵

Abstract
Increasing the number of suspects who give true confessions of sexual abuse serves justice and reduces the burden of the criminal justice system on child victims. While data from law enforcement, the legal system, confession rates and prediction of confessions of child sexual abuse over the course of criminal investigations from 1993 to 2004 show that 48% of suspects confessed partially or fully to the crime. This rate was consistent across the jurisdictions and is very similar to the rates of suspect confessions of child sexual abuse based on previous reports, although lower than the rates of true sexual abuse and consistency with a previous practice of pretrial testing. In a multivariate analysis, confession was more likely when suspects were charged and when more evidence of abuse was available, particularly child disclosures and corroborative evidence. These results suggest the difficulty of obtaining confessions but also the value of evidence that facilitates child disclosures and seek corroborative evidence, for increasing the rate of confessions.

Keywords
child sexual abuse, confession, criminal justice, disclosure, evidence, children's advocacy centers

- Corroborating evidence more than **DOUBLES** confession rates
- Reduces child stress during court process
- Lipovsky (1994)
- "A powerful predictor of charging"
- Walsh, Jones, Cross & Lippert (2010)

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Prior Bad Acts

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Multiple victims



- Men who molest girls average 19.8 victims
- Men who molest boys average 150.2 victims
 - Abel, et al
- Why might it be easier to sexually abuse a boy?
- "Evidence of abuse against another child was also strongly related to confession."
 - Lippert, Cross, et al (2010)

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Rule 404(b), Lustful Disposition Evidence

- Rule 404(b) admissible purposes: proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, lack of accident
- WV: lustful disposition towards victim, children generally, or specific other children
- Consider:
 - "Slipped in shorts"
 - Multiple daughters
- Be proactive

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Physical Evidence

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Photographing injuries



- High quality camera with immediate image that can be used in suspect interrogation or witness interviews
- Photograph on two dates



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Medical evidence in sexual abuse cases

- Physical examination positive findings no better than 3% (Kaplan, et al)
- Mental and medical health benefits to child (ACE)
- Hearsay exception: statements made for medical diagnosis or treatment



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Medical evidence in physical abuse cases

- Injuries consistent or inconsistent with history
 - Spider bite
 - 2 year old
- Degree of force: ask defendant to demonstrate on video
- Refute claim of easy bruising



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Location of injuries

- Children are forward moving and frontal explorers, most accidental injuries are to "frontal" locations (forehead, nose, chin, palms, elbows, shins)
- Injuries to buttocks, genitalia, abdomen, back, lateral areas of body more likely to indicate abuse



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Dream a little bigger



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Social Media



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Ultimate source of incriminating statements



Da Greatest 🍌
@L_F_3509

Follow

and wtf lol tf you getting popped first fr try me 🍌

1:19 PM · 3 May 2014

73 Retweets · 42 Likes

👍 36 🗨️ 73 🍌 42



Da Greatest 🍌
@L_F_3509


Follow

Mfs wanna test me now 🍌🍌🍌 you crazy I'm crazy too let's die shooting

2:34 PM · 3 May 2014


47 Retweets · 19 Likes

👍 13 🗨️ 47 🍌 19




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
Buttocks




Testicles



Penis




Breasts, Virgin, and/or Child/Child-like



Vagina

Anatomical emojis



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Child/Child-like




Child Virgin



Pimp or Money



Minor Under House Arrest or Pimp



Pair of trafficked girls

People emojis



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Male Ejaculation

Oral Sex

Female Orgasm/Orgasm

Male Erection

Sexual Intercourse

Action emojis

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Seeing something X-rated

X-rated Chat

Make an X-rated Video

Send X-rated Photos

X-rated Video

Technology emojis

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Temporarily in town

Condom

Attractive or Sexy

Dollars or "The Prize"

Other emojis

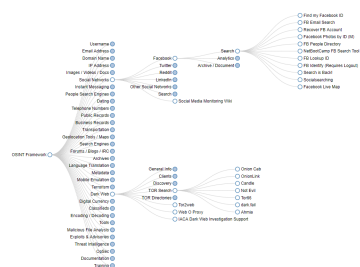
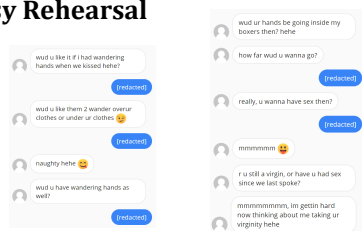
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Social media communications as evidence of grooming

- "Offenders often strategically used age-appropriate language and [emojis] to dialogue effectively with minors."
- "One offender in his late 40s, typed the phrase 'OMG no u didn't!' in response to a minor who disclosed a fight with her mother."
- Handbook on Interpersonal Violence Across the Lifespan: Technology-Facilitated Child Abuse (Peters, 2020)

Fantasy Rehearsal






pipl.com


Find the Real Person Behind the Online Identity

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- Use search modifiers
 - Exclude terms: minus (-) symbol
 - "John Doe -youtube"
 - Search inside websites
 - "Site:facebook.com"
 - Search URLs only
 - "Inurl:BadGuyUsername"
 - Search sites within location
 - "BadGuy location:wv"

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- Search by file type
 - "BadGuyFinances filetype:xls"
- Reverse image search
 - Google, click images, click camera, upload image or URL

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Digital Evidence



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Categories of Digital Evidence

- Contraband
- Evidence of a crime
- Instrumentality of a crime
- Target of a crime
- EVERY case has digital evidence



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What evidence might be found on a cell phone in a typical child abuse case?



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Evidence on Mobile Devices

- Call logs (received, sent, missed)
- Photographs
 - EXIF data
- Video/audio
- Online accounts
- Email
- Social media accounts
- Banking
- Text and video messaging
- CSLI
- Billing information
- Internet/data usage
 - Browser history
- Identifiers/subscriber information
- Connected devices
- Others?



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Digital Evidence and Prior Bad Acts

- Search terms indicative of child sexual abuse material or in-person offenses
 - Ex. PTHC, lolita
- Deleted file names indicative of child sexual abuse material, or corroborating victim/act preferences



Source: Ben Chang, Flickr

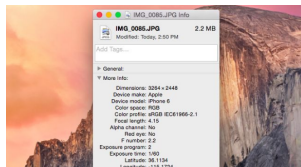


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EXIF data

- Most modern cameras (including smartphones) embed GPS coordinates in the metadata of photos taken

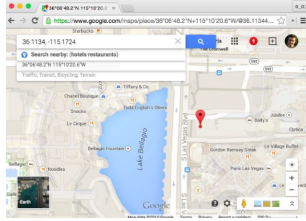


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EXIF data

- Most modern cameras (including smartphones) embed GPS coordinates in the metadata of photos taken
- Many platforms (Facebook) remove from uploaded images



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Cell Site Location Information

- "Cell phones perform their wide and growing variety of functions by continuously connecting to a set of radio antennas called "cell sites." Each time a phone connects to a cell site, it generates a time-stamped record known as **cell-site location information (CSLI)**."
 - *Carpenter v. United States*, 138 S. Ct. 2206, 2208 (2018)
- Includes latitude and longitude information
- Could introduce via investigator testimony or...



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Cell Site Location Information



Source: COMMENT: The Admissibility of Cell Site Location Information in Washington Courts, 36 Seattle U.L. Rev. 1473, 1473



Source: NWIC, Periphound tool, nw3c.org



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Wireless router

- “the potential for an offender to have a mobile device on his or her person, who connects to a Wi-Fi network, may afford evidence **to place them at a scene, at a particular time.**” (Blackman et al)
- What devices are connected?



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Data is stored by vehicle systems as it is collected and processed. The information contained in those repositories is critical evidence that is extremely valuable during an investigation. High level categories include;

VEHICLE EVENTS	LOCATION DATA	CONNECTED DEVICES
Access event logs associated with activity such as door opens, gear shifts, odometer reads, ignition cycles, speed logs, and more	Recover location data and navigation information such as track logs, named locations, active routes and previous destinations	Identify devices that have been connected via the USB ports, over Bluetooth or wireless network and all of the data associated with those devices


Source: Beria Corporation

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Analysis of vehicle data will answer key questions for investigators and change the course of an investigation. Vehicle data can help determine;

<p>WHAT HAPPENED</p> <ul style="list-style-type: none"> • Provide insight on the sequence of events that took place leading up to an incident • Identify patterns of life and unusual events that happened around an incident • Determine timelines of activity and establish a chain of significant events 	<p>WHERE IT OCCURED</p> <ul style="list-style-type: none"> • Provide historical data to show where a vehicle was at specific times • Identify areas frequently visited, new locations traveled, and future plans • Determine how long particular locations were visited 	<p>WHO WAS INVOLVED</p> <ul style="list-style-type: none"> • Provide unique identifiers that tie individuals to a specific vehicle • Identify known associates and establish communication patterns between them • Determine who may have been present or aware of key information during an incident
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Source: Berla Corporation



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Wearable tech



Catholic University Journal of Law and Technology

Volume 24 | Issue 2 Article 9

2016

Wearable Devices as Admissible Evidence: Technology is Killing Our Opportunity to Lie

By Nicole Chauhan
Catholic University of America, Columbus School of Law




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Judge orders Amazon to turn over Echo recordings in double murder case

Zack Winkler
 (@zackwinkler) · 11:46 am CDT · November 14, 2018



How to hear and delete Alexa conversations

Did you know Alexa records everything you say? Here's how to delete it all

By Tyler Lacoma
 November 23, 2019


STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY SUPERIOR COURT


State of New Hampshire
v.
Timothy Yennil
Docket No. 219-2017-CR-072

ORDER ON MOTION TO SEARCH IN LIEU OF SEARCH WARRANT

The State moves to allow the search of the server(s) and/or records maintained for or by Amazon.com for all recordings made by an Echo smart speaker with Alexa voice



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Internet of Things



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Teledildonics

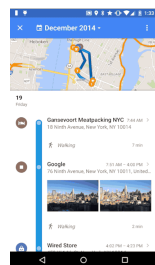
- Control of sex toys via the Internet
- "The Bluetooth and Wi-fi features of the device, working along with the mobile app, makes it possible to use the device over a short distance or around the world."
- "...the device makes it possible to connect directly with online videos from the Fleshlight models, this way you can bring your fantasy to life and switch between synchronizing with your dream girls as much as you want."
- "The OH!DOMETER features also helps in keeping track of your orgasms. This way you can set your sexual satisfaction targets for the month or week and then make sure to reach this goal."



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Google Dashboard



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Related Training

- The Matrix Reloaded: Predicting Trends in Technology-Facilitated Child Abuse
- Mindhunters: Leveraging Offender Psychology in Undercover Investigations
- When the Child Abuser Carries a Bible: Investigating and Addressing Abuse in Faith Communities
- No Words Needed: Working with Recanting and Nonverbal Victims
- Of Eggplants & Umbrellas: The Legal and Investigative Implications of Emojis
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